

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LYNN DALE HOVER and MILA  
JEAN HOVER,

Plaintiffs,

v.

SEATTLE-FIRST NATIONAL BANK,  
*et al.*,

Defendants.

CASE NO. C18-0022-JCC

ORDER

This matter comes before the Court on Defendant Bank of America, N.A.'s ("Bank of America") motion to dismiss (Dkt. No. 39). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

**I. BACKGROUND**

On July 17, 2002, Plaintiffs Lynn and Mila Hover obtained a \$196,000 loan from GMAC Mortgage Corporation DBA ditech.com ("GMAC"), secured by a deed of trust on land owned by the Hovers in Issaquah, Washington. (Dkt. No. 1-1 at 39–54.) The deed of trust appointed Trans National Title Company ("Trans National") as trustee, and nominated Mortgage Electronic

1 Registration Systems (MERS) as beneficiary.<sup>1</sup> (*Id.* at 40.) GMAC subsequently assigned the loan  
2 to Nationstar Mortgage LLC (“Nationstar”), and Northwest Trustee Services, Inc. (NWTs) was  
3 appointed successor trustee. (Dkt. Nos. 40-2 at 2, 40-3 at 2.) The Hovers later defaulted on the  
4 loan and on June 20, 2016, a notice of trustee’s sale was recorded in King County, Washington.<sup>2</sup>  
5 (Dkt. No. 1-1 at 59–68.)

6 On November 30, 2017, the Hovers filed this lawsuit against several Defendants  
7 including Bank of America, alleging that the failure to disclose that their mortgage could be  
8 assigned, as it was to Nationstar, voided the Hovers’ obligation and made the trustee’s sale  
9 unlawful.<sup>3</sup> (*Id.* at 2–3.) Specifically, the Hovers allege that:

10 On or about July 17, 2002 [they] engaged in a transaction with the  
11 original alleged-lender “Seattle-First National Bank aka Bank of  
12 America (by Mergers).” Said transaction allegedly extended  
13 consumer credit subject a finance charge initially payable to the  
14 alleged original lender the Defendant(s), “Seattle-First National  
15 Bank aka Bank of America (by Mergers),” who failed to give full  
16 disclosure of all the material terms and conditions of the [mortgage]  
17 . . . thereby making the deed of trust and note contracts for the said  
18 alleged “loan” null and void.

19 (*Id.* at 4–5.)<sup>4</sup>

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20 <sup>1</sup> MERS is a private database that tracks the ownership of mortgage loans. *See In re Mort.*  
21 *Elec. Registration Sys., Inc.*, 754 F.3d 772, 776–78 (9th Cir. 2014) (explaining function and  
22 purpose of MERS). MERS is typically named as the nominal beneficiary of a mortgage to  
23 simplify the later assignment and securitization of mortgage loans, but MERS does not ordinarily  
24 own the loan. *Id.*

25 <sup>2</sup> The notice identified the Hovers as the borrowers, Nationstar as the lender, and NWTs  
26 as the trustee. (Dkt. No. 1-1 at 61.)

<sup>3</sup> This lawsuit is the latest in a trilogy filed by the Hovers alleging that the mortgage loan  
was void for a failure to disclose the possibility that the loan could be assigned. (*See* Dkt. No. 39  
at 4–5) (citing *Hover v. GMAC Mortgage Corp.*, Case No. C16-1243-JLR, Dkt. No. 1 (W.D.  
Wash. 2016); *Hover v. GMAC Mortgage Corp.*, Case No. C17-0902-RSM, Dkt. No. 1 (W.D.  
Wash. 2017)). The Hovers’ previous two lawsuits involved many of the same Defendants as this  
case, although Bank of America was not a named defendant until this case. (*Id.*) Both prior cases  
were dismissed with prejudice. (*Id.*)

<sup>4</sup> The Court construes the Hovers’ allegations against “Seattle-First National Bank aka  
Bank of America (by Mergers)” as allegations against Bank of America.

1 The Hovers' claims against every Defendant except Bank of America have been  
2 dismissed with prejudice, and Bank of America now moves to dismiss the claims against it. (Dkt.  
3 Nos. 26, 39.) It asserts three separate bases for dismissal: first, that the Hovers' claims against it  
4 are barred by the doctrine of *res judicata*; second, that the Hovers' claims are time-barred; and  
5 third, that the Hovers claims are deficient, in part because they fail to allege facts implicating  
6 Bank of America in the allegedly unlawful conduct. (See Dkt. No. 39.) The Hovers filed a  
7 response, but did not substantively respond to Bank of America's arguments.<sup>5</sup> (See Dkt. No. 44.)

## 8 **II. DISCUSSION**

### 9 **A. Legal Standard**

10 A defendant may move to dismiss claims against it where the complaint "fail[s] to state a  
11 claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A complaint will survive a  
12 motion to dismiss if it contains factual allegations that, taken as true, state a plausible claim that  
13 the plaintiff is entitled to relief against the defendant. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78  
14 (2009). The Court's review on a motion to dismiss is limited to the pleadings, but it may  
15 consider documents attached to the complaint or referenced in it. *United States v. Ritchie*, 342  
16 F.3d 903, 908 (9th Cir. 2003). Ordinarily, the Court is bound to accept as true all of the facts in  
17 the complaint. *Vasquez v. Los Angeles ("LA") County*, 487 F.3d 1246, 1249 (9th Cir. 2007).  
18 However, the Court is not required to credit factual allegations that are plainly contradicted by  
19 documents attached to the complaint. *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th  
20 Cir. 1987). Here, the Court will consider the Hovers' complaint as well as the deed of trust,  
21 promissory note, and notice of trustee's sale, because all three were attached to the complaint.  
22 (See Dkt. No. 1-1 at 39–68.)

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24 <sup>5</sup> The Court acknowledges, but need not decide for purposes of this motion to dismiss, the  
25 Hovers' arguments regarding the Due Process Clause, the Equal Protection Clause, the Full Faith  
26 and Credit clause, the constitutional prohibition on slavery and involuntary servitude, the  
preemption of various state and federal statutes, and the constitutional right to a jury trial. (See  
Dkt. No. 44.)

1           **B.       Bank of America’s Motion to Dismiss**

2           Because the Hovers have failed to establish that Bank of America played any role in the  
3 mortgage transactions at issue in this case, the Court finds that the Hovers have failed to state a  
4 plausible claim upon which relief may be granted against Bank of America. *See Iqbal*, 556 U.S.  
5 at 677. As an initial matter, the Court construes the Hovers’ complaint to allege that Bank of  
6 America originated the disputed mortgage loan. (*See* Dkt. No. 1-1 at 4) (“On or about *July 17*,  
7 *2002*, . . . *Plaintiff(s) engaged in a transaction with . . . [Bank of America] . . . [which] extended*  
8 *consumer credit [to Plaintiffs].*”) (emphasis added). That factual allegation, however, is directly  
9 contradicted by the first and second attachments to the Hovers’ complaint—the deed of trust and  
10 promissory note on the mortgage—which both clearly indicate that GMAC originated the loan.  
11 (*See* Dkt. No. 1-1 at 39, 56.)

12           More importantly, nothing in any of the documents before the Court indicates that Bank  
13 of America was involved—in *any* way—in the Hovers’ mortgage. (*See generally* Dkt. No. 1-1 at  
14 39–68.) Nor is the problem a simple lack of documentary evidence to that effect. Rather, the  
15 mortgage documents clearly establish the identity of all the participants in the Hovers’ mortgage,  
16 none of which is Bank of America. (*Id.*) Thus, the record not only affirmatively contradicts the  
17 Hovers’ allegation that Bank of America originated the disputed loan, but it also contains no  
18 evidence that Bank of America was involved in the allegedly unlawful course of conduct.  
19 Therefore, the Court finds that the Hovers have failed to plead sufficient facts establishing a right  
20 to relief against Bank of America. Fed. R. Civ. P. 12(b)(6); *Iqbal*, 556 U.S. at 577. For that  
21 reason, the Court GRANTS Bank of America’s motion to dismiss, and need not reach its other  
22 arguments in support of dismissal.

23           **III.     CONCLUSION**

24           For the foregoing reasons, Defendant Bank of America’s motion to dismiss (Dkt. No. 39)  
25 is GRANTED. Plaintiffs Lynn and Mila Hover’s complaint is dismissed without prejudice and  
26 with leave to amend within 30 days of this order being filed. Any amended complaint must only

1 address the deficiencies outlined in this order. Specifically, the Hovers may only allege facts  
2 demonstrating that Bank of America played a role in the mortgage transaction at issue, and attach  
3 any supporting evidence in their possession. No additional claims or legal arguments in the  
4 amended complaint will be considered. If the Hovers do not file an amended complaint within 30  
5 days, the Court may dismiss the suit with prejudice.

6 DATED this 26th day of November 2018.

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10 John C. Coughenour  
11 UNITED STATES DISTRICT JUDGE  
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